FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 160

HOWARD UNIVERSITY, A CORPORATION,

Petitioner,

vs.

DISTRICT OF COLUMBIA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

GEORGE E. C. HAYES,
613 F Street, N. W.,
Attorney for Petitioner.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Howard University, a corporation organized by special Act of Congress, approved March 2, 1867 (14 Stat. 438), respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia rendered in the above captioned cause on March 18, 1946, rehearing of which was denied April 3, 1946.

I.

OPINIONS OF COURTS BELOW

The decision of the Board of Tax Appeals for the District of Columbia appears in the joint appendix, page 23. Its Findings of Fact and Conclusions of Law appear in the joint appendix, pages 13 through 18.

The opinion of the United States Court of Appeals for the District of Columbia, rendered March 18, 1946, is not yet officially reported but is printed and attached hereto. R-96 to 102

II.

JURISDICTION

A timely petition for rehearing was filed. Rehearing was denied April 3, 1946. - R 103

The jurisdiction to review the cause by writ of certiorari is conferred upon this Court by section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (U.S.C. Title 28, Section 347 (a)).

III.

SUMMARY STATEMENT

The facts are not in dispute. They are for the most part set forth in the joint appendix, pages 2 through 8. They are set forth in the Findings of Fact by the Board of Tax Appeals, joint appendix, pages 13 through 17, which is here quoted for convenience:

> "1. Petitioner is a corporation organized by a special act of Congress approved March 2, 1867 (14 Stat. 438). Section 1 of the statute is as follows:
>
> "Section 1. That there be established, and is hereby established, in the District of Columbia, a university for the education of youth in the liberal arts and

sciences, under the name, style, and title of 'The Howard University.'

"Sec. 2. of the Act authorizes the corporation to take, sell, lease, and place out on interest for the use of the University, real and personal property, and do and transact all and every business touching or concerning the premises, provided that the same not exceed the value of $50,000 net annual income exclusive of receipts for the education and support of the students of the University.

"By act approved May 13, 1938 (52 Stat. 351), section 2 of the incorporating statute was amended by striking therefrom the $50,000 limitation.

"2. Beginning with the Act of March 3, 1879 (20 Stat. 404) Congress has from time to time made appropriations for petitioner. The Act of Congress approved December 13, 1928 (45 Stat. 1021) authorizes annual appropriations to aid in the construction, development, improvement and maintenance of the University, provides that it shall at all times be open to inspection by the Bureau of Education and shall be inspected by the Bureau at least once a year; and that an annual report making a full exhibit of the affairs of the University shall be presented to Congress each year in the report of the Bureau of Education.

"3. The Act of Congress approved June 16, 1882 (22 Stat. 104) recites that whereas the Howard University is an educational institution incorporated by act of Congress, the grounds and buildings of which were obtained under the authority of the United States, with funds appropriated by Congress, and whereas the University, in consideration of the provisions of that Act (of June 16, 1882) proposes to convey to the United States a certain tract of land containing about eleven acres, to be used as a public park under the

superintendence of the United States; enacts that the conveyance is thereby accepted by the United States, and remits all taxes, penalties, interest and costs upon the real and personal property of the University due or to become due, and unpaid at the date of the passage of the act; and further provides, in section 3 thereof as follows:

"Sec. 3. That the property, real and personal, of the said university shall be exempt from taxation so long as such property shall be used only for the purposes set forth in the charter of said institution: . . .

"4. In 1929 the trustees of petitioner formulated plans for acquiring certain real property for the physical development of the University, provided funds for the purpose be made available by the General Education Board, and the Julius Rosenwald Fund. The Board and the Fund are philanthropic organizations, one established by John D. Rockefeller and one by Julius Rosenwald, for the furtherance of education.

"In the same year, these organizations agreed to finance such acquisitions and appropriated for that purpose $882,626 of which $661,970 was appropriated by the Board and $220,656 by the Fund. Petitioner thereupon proceeded to purchase a number of parcels of real estate in the vicinity of land and buildings at the time in use by it for educational purposes, and to pay indebtednesses secured by encumbrances on various portions thereof. Certain of the real estate was income-producing and the net income produced therefrom, plus interest earned on unexpended portions of the fund, were used for the acquisition of additional real estate and for the payment of debts secured by encumbrances on the extension property.

"5. On July 1, 1944, this fund, referred to as the 'Plant Extension Fund,' included $1,095,899.83 worth

at cost) of such real estate, subject to encumbrances of $8,990.47. Prior to that date, $305,012 worth thereof had been appropriated to the direct educational purposes of petitioner, and on that date was in use for such purposes, and is not involved in this appeal; $84,157.28 was on that date vacant and not productive of income, and is likewise not here involved. Such of the properties as are enumerated in Finding No. 9 were, on and prior to July 1, 1944, improved by dwellings, apartment houses, and commercial property, and were rented to various tenants for the occupancy of such tenants.

"6. With the exception of $30,000 invested in Government securities, the principal of the Plant Extension Fund and the net income derived from the real estate thereof has been used exclusively for the reduction of indebtednesses secured on the Plant Extension property, or for the acquisition of additions thereto.

"7. The gross rental income of the Extension Fund property for the year ended June 30, 1944, was $50,992.79, and the net income thereof, after deducting expenses, including $17,123.38 for repairs and alterations to buildings, but not including taxes or depreciation, was $23,300.55.

"8. Ever since the acquisition of these properties by petitioner, it has had the intention of ultimately using them for the enlargement of its plant and facilities, and for several years it has had definite plans as to the use to be made of various portions thereof. These plans contemplate total expenditures of about $15,000,000, of which petitioner expects about $11,000,000 to be appropriated by Congress, and to which it expects to contribute the remaining $4,000,000, such remainder to consist of the real property of the Plant Extension Fund and the income, or property to be purchased with the income therefrom, and such addi-

tional funds as it may be able to acquire. The extension program of petitioner has been approved by the Commissioner of Education and the Secretary of the Interior, and by the Committee on Appropriations of the House of Representatives in its report on the Interior Department Appropriation bill for the fiscal year 1932.

"9. In August, 1944, the Assessor made a real-estate tax assessment of $5,662.42 for the fiscal year ended June 30, 1945, against the following-described real estate belonging to petitioner, being that portion of the Extension Fund property which was under rental as stated in Findings 4 and 5:

"Square 3057: Lots 18 to 21 inclusive; Lots 28 to 31 inclusive; Lots 66 to 71, inclusive; Lot 73; Lots 75 to 86, inclusive; Lots 88 to 90, inclusive; Lot 824.

"Square 3058: Lots 31 to 35, inclusive; Lots 37 to 39, inclusive.

"Square 3060: Lots 26 to 28, inclusive; Lot 30; Lots 34 to 39, inclusive; Lots 800 to 802, inclusive; Lots 804 to 815, inclusive; Lots 826 to 828, inclusive; Lot 832.

"Square 3064: Lots 40, 41, 805, 806, 809, 810, 811, 812, 814, 815, 816, 824.

"Square 3068: Lots 27, 28, 802.

"10. On July 1, 1944, petitioner was the owner of also the following-described real estate in the District of Columbia:

"Square 3060: Lot 834.

"Square 3064: Lots C, 817 and 833.

"Square 3068: Lots 7, 8.

"Square 2866: Lot 82.

"With the exception of Lot 82 in Square 2866, all of these properties were in squares in which petitioner owns other property, some of it used for its direct educational purposes and some of it forming a portion of its Extension Fund property but not so used. With respect to some of these properties enumerated in this Finding, definite plans have been made to incorporate them in petitioner's educational plant.

"Lot 82 in Square 2866 is remote from petitioner's educational plant, and it has never been petitioner's intention to use it as part thereof. The properties in Squares 3060, 3084 and 3068 were purchased by petitioner with monies in its endowment funds. Lot 82 in Square 2866 was brought in by petitioner at foreclosure under a mortgage which it held thereon, which mortgage it had acquired with monies in its endowment fund.

"11. All of the properties referred to in Finding No. 10 were, on and prior to July 1, 1945, improved by dwellings, apartments, and commercial properties, which were rented to various tenants for the occupancy of such tenants. The net income from all of these properties was used for the direct educational activities of petitioner, such as payment of professors' salaries, scholarships and costs of administration of its educational affairs.

"The gross rental income therefrom for the fiscal year ended June 30, 1944, was $4,696.48, and the net income thereof, was $1,591.82. These figures include a gross income of $964.23 and a net income of $846.41 from Lot 82 in Square 2866.

"12. In August, 1944, the Assessor made a real-estate tax assessment of $1,152.72 for the fiscal year ended June 30, 1945, against the properties referred to in Finding 10, which included an assessment of $540.18 against Lot 82 in Square 2866.

"13. Petitioner filed this appeal within ninety days after the making of the assessments referred to in Findings 9 and 12, claiming that the properties were exempt from taxation."

Supplementing paragraph 9 of the Findings of Fact by the Board, petitioner sets forth as follows: The Commissioners gave as their reason for making the assessment in their letters of June 1, and 3, 1944 (joint appendix 5, 6, 7), the property was not being used for educational purposes, and not entitled to exemption under the provision of the Act of December 24, 1942.

IV.

SPECIFICATION OF ERRORS

The Court below erred—

1. In affirming the Order of the Board of Tax Appeals—

(a) In holding that the properties here involved were not exempt from taxation under the certain special acts of Congress, dealing with the petitioner.

(b) In not holding that the Commissioners acted without legal authority and contrary to Section 801a, (e) Title 47 of the District of Columbia Code, 1940 Edition.

V.

QUESTIONS PRESENTED

1. Do the special acts of Congress approved March 2, 1867 (14 Stat. 438), (page 14 herein), special Act approved June 16, 1882 (22 Stat. 104) (pages 15-16 herein), special Act approved May 13, 1938 (52 Stat. 351) (page 15 herein), and the Act approved December 24, 1942 (56 Stat. 1089), page 17, exempt the properties of the petitioner involved here from taxation?

(a) Is not *ownership*, so long as used for the purposes set forth in the Charter, rather than bare *use* the true test of the exemption granted?

2. Under the act of Congress approved December 24, 1942, Title 47 of the District of Columbia Code, 1940 Edition, Section 801a (e) (page 17 herein), can the respondent place the petitioner's property upon the tax rolls?

(a) Are not the functions of the Commissioners under this section of the Act purely ministerial which may not be exercised in such a way as to defeat the will of the Congress and defeat the rights of the petitioner?

(b) Does not the legislative history show that it was the intention of the Congress not to change the status of any of the institutions to which the special acts applied?

(c) Can the Commissioners, who recognized the exemption under the acts of 1867, 1882 and 1938, now say that the exemption does not apply by reason of the Act of December 24, 1942?

VI.

DISCUSSION

The basis of this litigation is the action of the Commissioners of the District of Columbia in ordering certain properties of the petitioner placed upon the tax rolls. It is to be noted that the reason for this action is given by the Commissioners in their letters of June 1 and 3, 1944, Joint Appendix 5, 6, and 7, which states as follows: "The property is not used for educational purposes, and is not entitled to exemption under the provisions of the act of December 24, 1942." This admission and the further fact that the Commissioners have taken no action upon this question from the date of the exemption statute until this time, clearly defines the issue and narrows it down to the question whether the power of the Commissioners, under the act of December 24, 1942, Section (e), is purely ministerial, and if they acted without legal authority.

It has been and is now urged that in keeping with the language of the Act (page 17 herein), that the Commissioners acted without legal authority in replacing the previously exempted property of Howard University on the

tax roll and that the Commissioners had no alternative but to make a report to Congress of such use as was being made of the property in question by Howard University, with recommendations; for this property was admittedly "heretofore specifically exempted from taxation by a Special Act of Congress."

Two circumstances, both heretofore urged, first before the Board of Tax Appeals, and next the United States Court of Appeals for District of Columbia, but likewise passed over without comment, impress us with the correctness of our position. First, the intention of Congress in this connection is plainly and convincingly shown in the Report of the Committee on the District of Columbia regarding this tax bill made by Senator McCarran, made as of, to wit, October 7, 1942, as follows:

> "The bill comprises seven sections. Section 1 has 18 subparagraphs listing the real property exempted from taxation under the provisions of the bill.
>
> "Subparagraphs a, b, c, d, and e exempt property belonging to the United States of America, the District of Columbia, foreign governments when such property is used for legation purposes, the Commonwealth of the Philippines when such property is used for government purposes, and property which has heretofore been exempted from taxation by special acts of Congress. Such exemption is continued in force until the Commissioners shall have submitted a recommendation to the Congress as to future possible action. It is intended that nothing in this bill shall be construed to mean that these special acts are repealed or that the status of the institution to which such special Acts apply has changed. The committee has directed that the Commissioners of the District of Columbia shall make a report to the Congress of the use being made of such properties and of any changes in such use during any calendar year, together with recommendations by the Commissioners."

This is all in strict keeping with the rule frequently stated by this Court that taxing acts "are not to be extended by implication beyond the clear import of the language used"; and that doubts are to be resolved against the Government and in favor of the taxpayer.

Secondly, both in the nature of a clarification of the purpose of the proviso and as an intimation of what Congress wanted to have the right to do and would have doubtless done had the proper report with recommendations been made to it by the Commissioners of the District of Columbia, attention is called to the fact that at the time in 1882 when the exemption statute with respect to Howard University was enacted, the University, with full knowledge of Congress, was the owner of extensive property holdings throughout the District of Columbia. The $50,000.00 limitation to tax exemption put upon the University property by Congress simply amounts to a showing of knowledge as to the University's extensive real estate holdings in wide and far flung areas and expressly exempted same up to the amount of said $50,000.00.

Equally significant, and again showing that Congress fully intended that Howard University's property should be tax exempt is the fact that on May 18, 1938 Congress amended the Charter of Howard University by striking therefrom the aforementioned $50,000.00 limitation, and it left no restriction as to the amount of tax exemption to which the University might be entitled (page 15 herein).

This Court judicially knows that Congress annually appropriates more than a million dollars toward Howard University's support and requires of it annually a report as to its stewardship and a detailed report of its holdings of every kind. Is it reasonable to suppose that Congress, in 1888, would first of all have exempted University property scattered throughout the city and not "used" for the purposes of the University, as set forth by the narrow interpretation given by the Board of Tax Appeals and upheld by the United States Court of Appeals for the District

of Columbia if it had not intended that property so "used" should be exempt? Or, can it be supposed that Congress would liberally contribute toward the University's support, as is its wont, and desire or sanction that the effectiveness of its action should be impaired by the imposition of District of Columbia taxes? Doesn't it from this appear that Congress provided for a report and recommendation from the Commissioners of the District of Columbia as to the use being made of property thus exempted by its special acts in order that just such circumstances as we here face might be avoided? What, we ask, if this be not correct, can be the interpretation of the language used? In all events, is not this proposition sufficiently important to merit a decision by this Court?

Because we feel that the exemption granted here is based upon *ownership, so long as used for the purposes set forth in the charter,* rather than just bare *use,* we call the Court's attention to the cases of Washington University v. Rouse, 8 Wall. 439; St. Anna's Asylum v. New Orleans, 105 U. S. 362, decided by this Court; and the cases of Chicago Home v. Carr, 300 Ill. 478, 133 N. E. 344; Washington University v. Baumann, 341 Mo. 708, 108 S. W. (2nd) 403; Vanderbilt University v. Chaney, 116 Tenn. 259, 94 S. W. 90; and Woonsocket Hospital v. Quinn, 54 R. I. 424, 173 Atl. 550.

We cannot but feel that this Court, in the Northwestern University v. People, 99 U. S. 309, and Trinidad, Insular Collector v. Sagrada Orden, 263 U. S. 578, spoke convincingly on the fundamental proposition here involved, and whereas distinctions, such as were made by the Board of Tax Appeals and now by the United States Court of Appeals for the District of Columbia, are admittedly recognizable, we believe that the language used in each of these cases is susceptible of but one interpretation and that in parallel circumstances the property should be exempt from taxation. In this connection we call the attention of the Court to a quotation from the Northwestern University case.

"The purposes of the school, and the school, are not identical. The purpose of a college or university is to give youth an education. The money which comes from the sale or rent of land dedicated to that object aids this purpose. Land so held and leased is held for school purposes, in the fullest and clearest sense."

With the question here raised as to whether by the renting of property owned by the University that the purpose of the Charter—the education of youth—is violated, it seems to us that this language is controlling. Again with an appreciation of the distinction drawn by this Court in the Trinidad, Insular Collector case, the language seems to us so applicable that we again partially quote a citation from that case:

"Making such properties productive to the end that the income may be thus used does not alter or enlarge the purposes for which the corporation is created and conducted. This is recognized in Northwestern University v. Illinois, 99 U. S. 309, 324, 25 L. ed. 387, 390, where this court said: 'The purpose of a college or university is to give youth an education. The money which comes from the sale or rent of land dedicated to that object aids this purpose. Land so held and leased is held for school purposes, in the fullest and clearest sense.'"

Prior to the decision of the United States Court of Appeals for the District of Columbia, March 18, 1946, this matter had not been passed upon in this jurisdiction, and it is respectfully submitted that writ of certiorari should issue from this Court to the United States Court of Appeals for the District of Columbia.

Respectfully submitted,

George E. C. Hayes,
613 F Street, N. W.,
Attorney for Petitioner.

ACT OF INCORPORATION OF HOWARD UNIVERSITY

Special Act of Congress, approved March 2, 1867 (14 Stat. 438).

"Section 1. That there be established, and is hereby established, in the District of Columbia, a University for the education of youth in the liberal arts and sciences, under the name, style, and title of—The Howard University.

"Section 2. And be it further enacted, that Samuel C. Pomeroy, Charles B. Boynton, Oliver O. Howard, Burton C. Cook, Charles H. Howard, James B. Hutchinson, Henry A. Brewster, Benjamin F. Morris, Danforth B. Nichols, William G. Finney, Roswell H. Stephens, E. M. Cushman, Hiram Barber, E. W. Robinson, W. F. Bascom, J. B. Johnson, and Silas L. Loomis be, and they are hereby declared to be a body politic and corporate, with perpetual succession in deed or in in law to all intents and purposes whatsoever, by the name, style, and title of 'The Howard University,' by which name and title they and their successors shall be competent, at law and in equity, to take to themselves and their successors, for the use of said University, any estate whatsoever in any messuage, lands, tenements, hereditaments, goods, chattels, moneys, and other effects, by gift, devise, grant, donation, bargain, sale, conveyance, assurance or will; and the same to grant, bargain, sell, transfer, assign, convey, assure, demise, declare to use and farm let, and to place out on interest, for the use of said University, in such manner as to them, or a majority of them, shall be deemed most beneficial to said institution; and to receive the same, their rents, issues and profits, income and interest, and to apply the same for the proper use and benefit of said University; and by the same name to sue and be sued, to implead and be impleaded, in any courts of law and equity, in all manner of suits, actions, and proceedings whatsoever, and generally by and in the same name to do and transact all and every the business touching or concerning the premises: Provided, That the same do not exceed the value of fifty thousand dollars net annual income, over and above and exclusive of the re-

ceipts for the education and support of the students of said University."

Amended and approved, May 13, 1938 (52 Stat. 351).

"Section 2. And be it further enacted, That Samuel C. Pomeroy, Charles B. Boynton, Oliver O. Howard, Burton C. Cook, Charles H. Howard, James B. Hutchinson, Henry A. Brewster, Benjamin F. Morris, Danforth B. Nichols, William G. Finney, Roswell H. Stephens, E. M. Cushman, Hiram Barber, E. W. Robinson, W. F. Bascom, J. B. Johnson and Silas L. Loomis be, and they are hereby declared to be a body politic and corporate with perpetual succession in deed or in law to all intents and purposes whatsoever, by the name, style and title of 'The Howard University,' by which name and title they and their successors shall be competent, at law and in equity, to take to themselves and their successors, for the use of said University, any estate whatsoever in any messuage, land, tenements, hereditaments, goods, chattels, notes, bonds, stocks, moneys, and other effects, by gift, devise, grant, donation, bargain, sale, conveyance, assurance or will; and the same to grant, bargain, sell, transfer, assign, convey, assure, demise, declare to use and farm let, and to place out on interest, for the use of said University, in such manner as to them, or a majority of them, shall be deemed most beneficial to said institution; and to receive the same, their rents, issues and profits, income, dividends and interests, and to apply the same for the proper use and benefit of said University; and by the same name to sue and be sued, to implead and be impleaded, in any courts of law and equity, in all manner of suits, actions, and proceedings whatsoever, and generally by and in the same name to do and transact all and every the business touching or concerning the premises."

"Amended and approved, May 13, 1938."

EXEMPTION ACT

Special Act of Congress, approved June 16, 1882 (22 Stat. 104).

"Chapter 222.—An Act for the Relief of Howard University. Whereas the Howard University is an

educational institution incorporated by Act of Congress, the grounds and buildings of which were obtained, under the authority of the United States, with funds appropriated by Congress; and

Whereas the said University, in consideration of the provisions of this Act, proposes to convey by a sufficient deed to the United States the parcel or square of ground bounded by Pomeroy Street, Fourth-and-a-half Street, College Street, and Sixth Street, known as University Park, containing about eleven acres, to be used as a public park under the superintendence of the United States, provided that whenever the same shall cease to be used as a public park the title thereto shall revert to the Howard University: Therefore, *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.* That the conveyance of the premises described in the preamble to this act, in the manner and upon the terms and consideration therein mentioned, be, and is hereby, accepted by the United States.

"Sec. 2. That all taxes, penalties, interest, and costs upon the real and personal property of the Howard University due, or to become due, and unpaid at the date of the passage of this act, be, and the same are hereby, remitted.

"Sec. 3. *That the property, real and personal, of the said University shall be exempt from taxation so long as such property shall be used only for the purposes set forth in the charter of said institution*:

Provided, That nothing in this act shall exempt any real estate of said university from assessment and liability for special improvements authorized by law:

Provided also, That this act shall not include any real estate sold or contracted to be sold by said University to any other person than the United States, the title to which may be still in the said University.

Approved June 16, 1882, (22 Stat. L. 104)."

(Italics ours.)

Act approved December 24, 1942 (56 Stat. 1089).

"Title 47-801a. Government property; property of educational, charitable, religious or scientific institutions; additional grounds of; profits arising from sale of.

"The real property exempt from taxation in the District of Columbia shall be the following and none other:

(a) Property belonging to the United States of America.

(b) Property belonging to the District of Columbia.

(c) Property belonging to foreign governments and used for legation purposes.

(d) Property belonging to the Commonwealth of the Philippines and used for Government purposes.

(e) Property heretofore specifically exempted from taxation by any special Act of Congress, in force December 24, 1942, so long as such property is used for which such exemption is granted. The Commissioners of the District of Columbia shall report annually to the Congress the use being made of such specifically exempted property, and of any changes in such use, with recommendations."

FILE COPY

IN THE SUPREME COURT OF THE UNITED STATES

October Term, [illegible]

HOWARD UNIVERSITY, a Corporation, Petitioner,

vs.

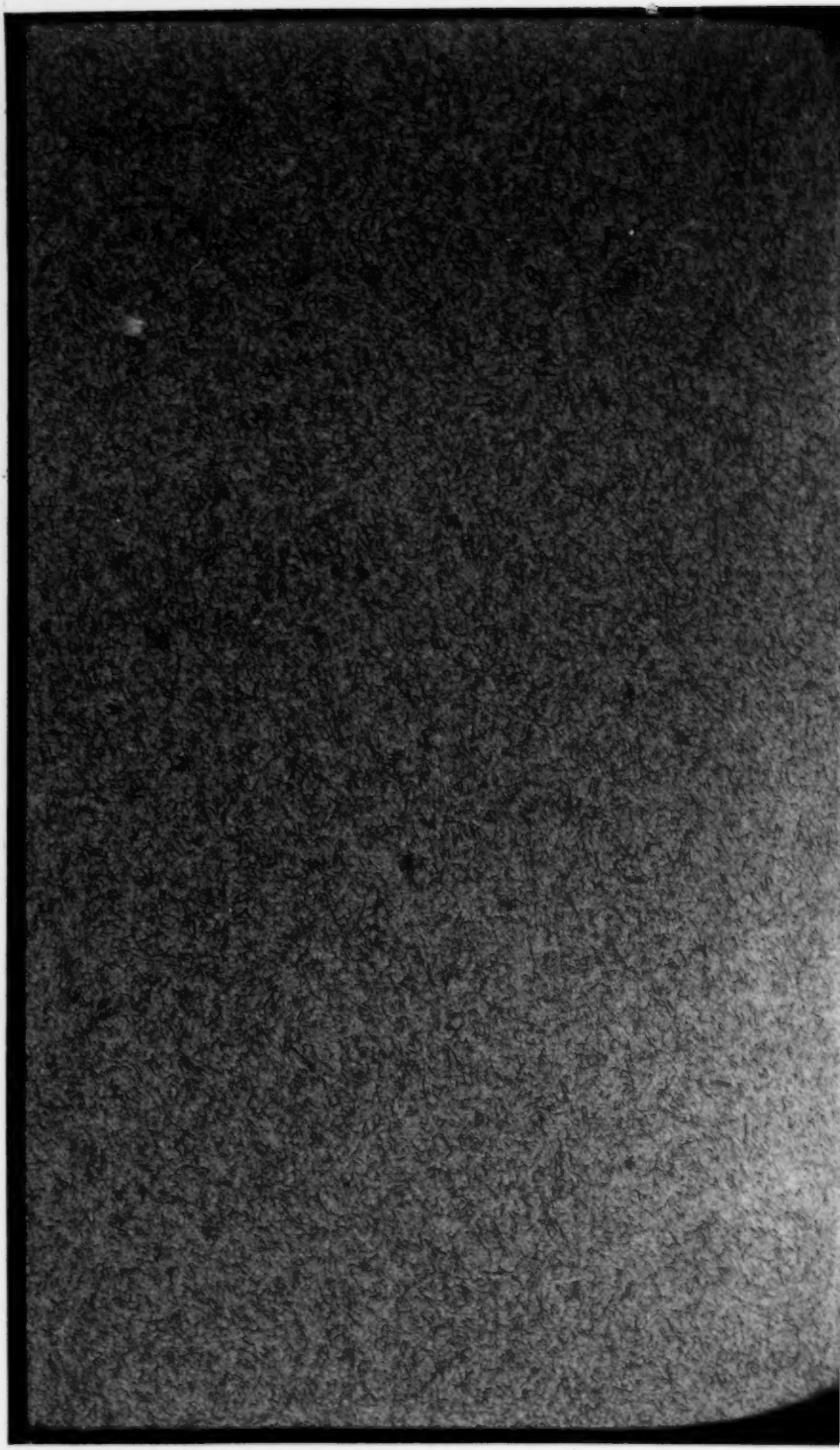
DISTRICT OF COLUMBIA, Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF IN OPPOSITION.

Vernon E. West,
Corporation Counsel, D. C.
Chester H. Gray,
Principal Assistant Corporation Counsel, D. C.
Attorneys for Respondent,
District Building.

Chester H. Gray,
Principal Assistant Corporation Counsel, D. C.,
Of counsel for Respondent,
District Building.



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DISTRICT OF COLUMBIA, *Respondent*.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

BRIEF IN OPPOSITION

OPINIONS BELOW

The findings of fact, conclusions of law and opinion of the Board of Tax Appeals for the District of Columbia (R. 13-23) are not yet reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 93-102) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals (R. 102) was entered March 18, 1946. Petition for rehearing was filed April 1, 1946, and denied April 3, 1946 (R. 103). The petition for writ of certiorari was filed in this Court on June 10, 1946. The jurisdiction of this court rests on Section 240(a) of the Judicial Code, as amended by the Act of Feburary 13, 1925 (43 Stat. 936, 938, c. 229; U. S. Code, 1940 ed., Title 28, Section 347(a)).

STATUTES INVOLVED

The following statutes are involved:

(a) A special Act of March 2, 1867, Sec. 1 (14 Stat. 438, c. CLXII):

> " * *That there be established, and is hereby established, in the District of Columbia, a University for the education of youth in the liberal arts and sciences, under the name, style and title of 'The Howard University'."

(b) The Act of June 16, 1882, Sec. 3 (22 Stat. 104, c. 222; D. C. Code, 1940 Ed., Sec. 47-811), pertaining to Howard University:

> "Sec. 3. That the property, real and personal, of the said University shall be exempt from taxation so long as such property shall be used only for the purposes set forth in the charter of said institution: * * *"

(c) The Act of December 24, 1942 (56 Stat. 1089, c. 826; D. C. Code, 1940 ed., Supp. IV, Sec. 47-801a to f, inclusive), pertaining to exemption of real property in the District of Columbia from taxation, the applicable provisions of which are as follows:

"* * the real property exempt from taxation in the District of Columbia shall be the following and none other:

"Section 1. * * (e) Property heretofore specifically exempted from taxation by any special Act of Congress, in force at the time of approval of this Act, so long as such property is used for the purposes for which such exemption is granted. The Commissioners of the District of Columbia shall report annually to the Congress the use being made of such specifically exempted property, and of any changes in such use, with recommendations.

* * * * * *

"Sec. 3. Every institution, organization, corporation, or association owning property exempt under the provisions of paragraph d to q, inclusive, of section 1 of this Act, shall, on or before March 1, 1943, and on or before March 1 of each succeeding year, furnish the Commissioners of the District of Columbia a report, under oath, showing the purposes for which its exempt property has been used during the preceding calendar year. * * A copy of such report shall be forwarded to the Congress by the Commissioners.

* * * * * *

"Sec. 5. Any institution, organization, corporation, or association aggrieved by any assessment of real property deemed to be exempt from taxation under the provisions of this Act may appeal therefrom to the Board of Tax Appeals for the District of Columbia in the same manner and to the same extent as provided in sections 3 and 4 of title IX of the District of Columbia Revenue Act of 1939,[1] as amended: *Provided, however,* That payment of the tax shall not be prerequisite to any such appeal."

[1] The figure "9" is obviously a printer's error, since the appellate sections referred to are in title IX of the District of Columbia Revenue Act of 1937 as added by the Act of May 16, 1938 (52 Stat. 371, c. 223; D. C. Code, 1940 ed., Sec., 47-2403 and 47-2404).

SUMMARY OF ARGUMENT

This case does not present any of the questions upon which this Court ordinarily grants a writ of certiorari. The case involves only the question whether the petitioner's real property which is not used for educational purposes, but is rented to others, is exempt or taxable under a special Act of Congress. The basic statute involved is applicable only to the petitioner, and the petition constitutes nothing more than a request for another hearing.

Statutes exempting property from taxation must plainly and unmistakably grant the exemption if the property is to be relieved of the burden of taxes. Otherwise the property is subject to taxation. The statute here involved exempts the petitioner's property from taxation so long as it is used only for educational purposes. The property taxed is rented to others. It is not used for educational purposes. The decisions of the lower courts followed the general rule of law which has been adopted by an overwhelming majority of the states to the effect that where statutes make the exemption depend upon use of the property, the exemption does not apply to property rented to others.

ARGUMENT

I

The petition should be denied.

The petition does not contain a statement of the reasons relied on for the allowance of a writ of certiorari as required by Rule 38, par. 2. It does not appear from the petition and the record that any of the reasons set forth in Rule 38, par. 5, exist in this case. No federal question, no question of substance relating to the construction or application of the Constitution or a statute of the United States which should be settled by this Court, and no question of general importance is presented.

The decisions of this Court which are cited in the petition, and on which the petitioner relies, involved questions pertaining to the Constitution and laws of other jurisdictions and are not applicable to the present case as indicated in the opinion of the United States Court of Appeals for the District of Columbia, written by the Chief Justice (R. 100, 101). The principal case relied on is *Northwestern University* v. *People*, 99 U. S. 309, which the Court of Appeals clearly distinguished (R. 100). That case was decided upon the question whether the exemption of the university from taxation under its charter of 1851 was a contract which was impaired by the assessment of taxes on the university's property under the new constitution of Illinois adopted in 1870. No such question is involved in the present case. The decision of this Court in the *Northwestern University* case, *supra*, holding that the property there involved was nevertheless exempt although the university received income from the sale or rent of land, constituted nothing more than a determination that the liberal exemption provisions of the university's charter of 1851 was a contract which could not be impaired by the assessment of taxes under the more restrictive provisions of the new constitution and the general law passed in 1872 to give effect thereto. That decision did not hold that exemptions under the general laws of Illinois remained in effect even though the property exempted was rented and produced income. This was pointed out by the Supreme Court of Illinois in *Monticello Seminary* v. *Board of Review* (1911), 249 Ill. 481, 94 N.E. 938, wherein it said, referring to the *Northwestern University* case, *supra* (N.E. p. 939):

> "This decision clearly intended to hold that under the Constitution of 1870 property leased or invested for profit is not used exclusively for a school, even though the income from it is applied for the purposes of the school. * * Nothing was said by the Supreme Court of the United States in the case above cited that indicated that it put a different construc-

> tion on the present Constitution. This court has always followed the construction of the Constitution of 1870 given in that case. People v. Theological Union, 171 Ill. 304, 49 N.E. 559. This court has held that property rented or held by an educational institution 'as an investment, even though the income thereof is used solely for school purposes,' is not exempt. * *"

All other decisions of this Court upon which the petitioner relies are likewise inapplicable to the present case as pointed out by the Chief Justice of the Court of Appeals (R. 101).

The petitioner is a private corporation (*Maiatico Construction Company* v. *United States*, &c., 65 App. D. C. 62, 79 F. 2d 418) which has been granted exemption of its property by a special act of the Congress so long as the property is used only for the purposes set forth in its charter, i.e., the education of youth (p. 2, supra; R. 99). None of the property involved is used for educational purposes (R. 15, 17, 37, 49). The Board of Tax Appeals for the District of Columbia found as a fact that such property is improved by dwellings, apartment houses and commercial property and was rented to various tenants on the tax date here involved (R. 15, 17). This finding of fact has not been questioned. The facts and special exemption statute applicable to this case are of importance only to the petitioner. This Court has recently stated that it will not ordinarily review decisions of the United States Court of Appeals for the District of Columbia which are based upon statutes limited in their operation to the District of Columbia. *District of Columbia* v. *Pace*, 320 U. S. 698, 702; *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285. In the present case the basic exemption statute is not only limited in its operation to the District of Columbia but to a private corporation.

The petitioner urges in support of its petition that the Commissioners of the District of Columbia had no authority to place the property involved on the tax rolls. This contention was made with the Board of Tax Appeals (R. 3) and the United States Court of Appeals for the District of Columbia

(R. 24). The only authority relied upon in support of this view is Section 1(e) of the Act of December 24, 1942, *supra*, and the report of the Congressional Committees (Pet. brief, p. 10) on said Act. It is obvious, since neither the Board of Tax Appeals nor the United States Court of Appeals for the District of Columbia commented upon this point, that the lower tribunals found no merit in such contention. Respondent respectfully points out that there is nothing in the Act of June 16, 1882, *supra*, or the Act of December 24, 1942, *supra*, that denies the fundamental authority of the Commissioners to administratively determine the exempt or taxable status of real property in the District under the provisions of special and general statutes applicable thereto. The decisions of the Board of Tax Appeals and the United States Court of Appeals plainly were founded upon the Act of March 2, 1867 (Pet. brief, p. 14) and the Act of 1882, *supra*. It is therefore clear that the assessments involved have not in any way changed the status of Howard University or violated the intention of the Congress. On the contrary, the intent of the Congress has been followed. In light of the foregoing, it thus appears that the petitioner, having lost its appeal in the two lower courts, merely seeks another hearing. This is not a reason why this Court, in the exercise of its discretion, should grant the writ of certiorari. See *Magnum Company* v. *Coty*, 262 U. S. 159, 163.

II

Statutes granting exemption from taxation should be strictly construed and doubts resolved in favor of the Government.

It is stated on page 11 of petitioner's brief that taxing acts are not to be extended by implication beyond the clear import of the language used, and that doubts are to be resolved against the Government and in favor of the taxpayer. Such is the general rule with respect to the question whether a statute *levies* a tax. *Gould* v. *Gould*, 245 U. S. 151. A different

rule prevails, however, if the question is whether a statute *exempts* property from taxation. It is well settled in the District of Columbia that statutes exempting property from taxation are to be strictly construed in favor of the taxing authority and against the taxpayer, and that exemption will not be granted unless the statute so provides in terms too plain to be mistaken. *Hebrew Home for the Aged* v. *District of Columbia*, 79 U. S. App. D. C. 64, 142 F. 2d 573; *Combined Congregations of the District of Columbia* v. *Dent*, 78 U. S. App. D. C. 254, 140 F. 2d 9. The rule is clearly stated in *Chicago Theological Seminary* v. *Illinois*, 188 U. S. 662, 672:

> "The rule is that, in claims for exemption from taxation under legislative authority, the exemption must be plainly and unmistakably granted; it cannot exist by implication only; a doubt is fatal to the claim."

To the same effect is *Cornell* v. *Coyne*, 192 U. S. 418, 431.

III

Section 2 of Petitioner's charter does not pertain in any way to tax exemption.

Petitioner refers on page 11 of its brief to what is termed "The $50,000.00 limitation to tax exemption put upon the University property by Congress * *" and removal of the limitation by amendment of the petitioner's charter in 1938. The reference is made to section 2 of the Act of March 2, 1867, which created Howard University, as amended by the Act of May 13, 1938 (Pet. brief, p. 14, 15). Said Section 2 in no wise relates to tax exemption. The limitation of $50,000 in that section as originally enacted clearly applies solely to "net annual income" over and above and exclusive of the receipts for the education and support of the students of the University. The amendment of said section by the Act of May 13, 1938, which removed the limitation, did not have any effect what-

soever upon the exempt or taxable status of the petitioner's property.

In deciding this case, the United States Court of Appeals for the District of Columbia adopted as the law in the District of Columbia the general rule of law followed in the overwhelming majority of the states that, under tax exemption statutes making the exemption depend upon the use of the property for favored purposes, as is the case here, the exemption does not apply to property rented to others. The decision, therefore, conforms to the general policy adopted by practically all of the states.

CONCLUSION

For the reasons hereinbefore stated, it is respectfully submitted that the petition for writ of certiorari should be denied.

VERNON E. WEST,
Corporation Counsel, D. C.,

GEORGE C. UPDEGRAFF,
Assistant Corporation Counsel, D. C.,
Attorneys for Respondent,
District Building.

CHESTER H. GRAY,
Principal Assistant Corporation Counsel, D. C.,
Of counsel for Respondent,
District Building.